UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

VENANCIO MARTÍ SANTA CRUZ, et al., Plaintiffs, v. BANCO SANTANDER PUERTO RICO, et al., Defendants.	Civil No. 08-1225 (JAF)

OPINION AND ORDER

Plaintiffs, Venancio Martí Santa Cruz ("Martí"), his wife Julita Soler Vilá, their conjugal partnership, and their daughters María Rosa Martí Soler ("María Rosa") and Sofía Martí Soler ("Sofía"), brought this action on February 21, 2008, against Defendants, Banco Santander Puerto Rico ("BSPR"), Santander Securities, Inc., Fernando Gallardo Álvarez ("Gallardo"), Gallardo's unknown supervisors, and unknown insurance companies, for violations of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), Rule 10b-5 of the Securities and Exchange Commission, 17 C.F.R. 240.10b-5, the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1964, and Puerto Rico law. Docket No. 1. On December 10, 2008, we granted Defendants' motion to compel arbitration of Martí's and María Rosa's claims and stayed Sofía's claims pending the arbitration. Docket No. 28. Martí moved for partial reconsideration of our order pursuant

to Federal Rule of Civil Procedure 60(b) on February 2, 2009. Docket No. 30. Defendants opposed on February 18, 2009. Docket No. 31.[1]

In their opposition to Defendants' motion to compel arbitration, Plaintiffs argued that Martí's claims should not be subject to arbitration because Gallardo had forged Martí's signature on the contract containing the arbitration clause. Docket Nos. 1, 22. We explained that, while Martí should not be bound to arbitrate claims he had not agreed to arbitrate, Plaintiffs had proffered only bald assertions regarding the forgery. Docket No. 28. In the absence of some evidence substantiating the allegation, we found that arbitration of Martí's claims was appropriate due to the existence of the arbitration agreement. Id. (citing Doctor's Assocs. v. Jabush, 89 F.3d 109, 114 (2d Cir. 1996) (requiring an "unequivocal denial" that there was an agreement to arbitrate and "some evidence . . . to substantiate the denial"); Chastain v. Robinson-Humphrey Co., 957 F.2d 851, 854-55 (11th Cir. 1992) (same)). Martí now submits a sworn affidavit, in which he attests under oath that Gallardo forged the signature on the contract, and asks us to vacate our order compelling arbitration of Martí's claims. Docket No. 30 & Exh. I.

[1] On April 7, 2009, we granted a stay in the present case as to Defendant Gallardo due to bankruptcy proceedings currently pending in the United States Bankruptcy Court for the District of Puerto Rico. Docket No. 36. We issue the present order, despite the existence of the stay, as our denial of reconsideration has no effect on the status of this case.

Rule 60(b) provides relief from a final judgment, order, or proceeding for, inter alia, "mistake, inadvertence, surprise or excusable neglect." Fed. R. Civ. P. 60(b)(1). In the present case, Martí appears to seek relief under the doctrine of excusable neglect. To determine whether a party's neglect is excusable we consider:

> '[A]ll relevant circumstances surrounding the [movant's] omission,' including 'the danger of prejudice to the [non-movant], the length of the delay and its potential impact on judicial proceedings, the reason for the [omission], including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.'

Mirpuri v. ACT Mfg., Inc., 212 F.3d 624, 630-31 (1st Cir. 2000) (quoting Pioneer Inv. Servs. Co. v. Brunswick Assocs., 507 U.S. 380, 392 (1993)). The most critical factor in our inquiry is the reason the movant gives for the negligent act. See Graphic Commc'ns Int'l Union, Local 12-N v. Quebecor Printing Providence, Inc., 270 F.3d 1, 5-6 (1st Cir. 2001) (requiring "a satisfactory explanation for the late filing"). "[I]nadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect . . . ." Pioneer, 507 U.S. at 392. In such instances, we have wide discretion to deny relief, particularly in "the absence of unique or extraordinary circumstances." Graphic Commc'ns, 270 F.3d at 6-7.

Martí states simply that he did not submit an affidavit or other evidence initially because he relied on the allegations in the opposition to the motion to compel arbitration. Docket No. 30. We

find this explanation insufficient, as he was fully capable of submitting substantiating evidence with the opposition. While we do not doubt that the failure to submit evidence resulted from Martí's or his counsel's good faith belief that the allegations were sufficient, the circumstances here are hardly extraordinary, and we find they do not justify relief. Plaintiffs have not given us any reason to depart from this circuit's strong policy in favor of arbitration agreements. See, e.g., KKW Enters. v. Gloria Jean's Gourmet Coffees Franchising Corp., 184 F.3d 42, 49 (1st Cir. 1999). Moreover, Martí is not left without remedy; he retains the opportunity to have the forgery issue heard and resolved by the arbitrator.

For the aforementioned reasons, we **DENY** Plaintiffs' motion to partially set aside our December 10, 2008, Order, Docket No. 30.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 20th day of April, 2009.

S/José Antonio Fusté
JOSE ANTONIO FUSTE
U.S. District Judge